

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOHN C. DAVIS,)	
)	
Plaintiff,)	
)	
v.)	NO. CIV-06-0229-HE
)	
OKLAHOMA DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff John Davis, a *pro se* state prisoner, instituted this action pursuant to 42 U.S.C. § 1983,¹ alleging violations of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B), this matter was referred to Magistrate Judge Valerie K. Couch, who recommended that (1) plaintiff's motion for summary judgment/motion for default judgment against defendant Rose McNutt be denied; (2) defendant McNutt be granted summary judgment *sua sponte* as to plaintiff's constitutional claims against her; (3) plaintiff's state law claims against defendant McNutt be dismissed without prejudice; (4) plaintiff's motion for default judgment/motion for summary judgment as to defendants Oklahoma Department of Corrections, Justin Jones, Randall Workman, Captain Davis, Josh Lee, Sergeant Ranells, and Sergeant Duncan ("DOC Defendants") be denied; (5) the DOC Defendants' motion to dismiss be granted and the claims against them be dismissed with prejudice; (6) defendant

¹Plaintiff incorrectly stated that his action was brought pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Laboratory Corporation of America's ("LabCorp") motion to dismiss claims against non-existent entity be granted; (6) defendant LabCorp's motion for summary judgment be granted; and (7) defendant LabCorp's motion to compel be denied as moot.

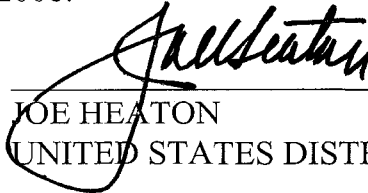
Plaintiff has failed to object to the Supplemental Report and Recommendation and, therefore, has waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1); LCvR 72.1(a). The court has also considered the merits of the matter and substantially concurs with the Magistrate Judge's analysis.

Accordingly, the court **ADOPTS** the Supplemental Report and Recommendation [Doc. #124]. Plaintiff's motion for summary judgment/motion for default judgment against defendant Rose McNutt [Doc. #87] is **DENIED**. Summary judgment is entered *sua sponte* in favor of defendant McNutt as to the constitutional claims against her and the state law claims against her are **DISMISSED** without prejudice. Plaintiff's motion for default judgment/motion for summary judgment as to the DOC Defendants [Doc. #88] is **DENIED**. The DOC Defendants' motion to dismiss [Doc. #116] is **GRANTED** and the claims against them are **DISMISSED** with prejudice. Defendant LabCorp's motion to dismiss claims against non-existent entity [Doc. #85] and its motion for summary judgment [Doc. #103] are **GRANTED**. Defendant LabCorp's motion to compel [Doc. #120] is **DENIED** as **MOOT**.

This does not terminate the referral to the Magistrate Judge in this matter.

IT IS SO ORDERED.

Dated this 13th day of March, 2008.



JOE HEATON
UNITED STATES DISTRICT JUDGE